

1 THE HONORABLE JOHN C. COUGHENOUR

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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 NORTHWEST ENVIRONMENTAL
11 ADVOCATES,

12 Plaintiff,

13 v.

14 UNITED STATES DEPARTMENT
15 OF COMMERCE, *et al.*,

16 Defendants.

CASE NO. C16-1866-JCC

MINUTE ORDER

17 The following Minute Order is made by direction of the Court, the Honorable John C.
18 Coughenour, United States District Judge:

19 This matter comes before the Court on Defendants' Motion for Reconsideration (Dkt. No.
20 42) of the Court's Order on Defendant's Motion to Dismiss (Dkt. No. 39).

21 On September 19, 2017, the Court granted in part and denied in part Defendants' motion
22 to dismiss. (Dkt. No. 39.) Defendants move for reconsideration or, at a minimum, clarification of
23 the Order concerning the Court's ruling on subject matter jurisdiction for Claims 4 and 5. (Dkt.
24 No. 42 at 1.) Motions for reconsideration are generally disfavored. W.D. Wash. Local Civ. R.
25 7(h)(1). But reconsideration is appropriate where there is "manifest error in the prior ruling or a
26 showing of new facts or legal authority which could not have been brought to [the Court's]
attention earlier with reasonable diligence." *Id.* Defendants assert it was manifest error for the

1 Court to apply procedural injury analysis when Plaintiff expressly disclaimed procedural injury
2 for Claims 4 and 5. (Dkt. No. 42 at 1–2.) Defendants also seek reconsideration of the Court’s
3 Order with respect to Defendants’ mootness argument for Claim 5. (*Id.*)

4 The Court clarifies that Plaintiff has standing for Claims 4 and 5 based on either
5 Plaintiff’s procedural injury or the traditional standing test. (*See* Dkt. No. 39 at 6–8) (concluding
6 that Plaintiff’s have standing for Claims 1–5 under either test). Given the Court’s independent
7 obligation to evaluate subject-matter jurisdiction, *Washington Env’tl. Council v. Bellon*, 732 F.3d
8 1131, 1139 (9th Cir. 2013), the Court is not bound by Plaintiff’s reliance on traditional standing
9 for these claims (*See* Dkt. No. 25 at 48).

10 As to Defendants’ mootness argument for Claim 5, the Court did not misapprehend
11 whether there is any meaningful relief the Court can order. (Dkt. No. 54 at 2.) Relief may include
12 clawing back existing grants or precluding Defendants from making current-year grants until
13 such time as Defendants show they have made reasonable progress determinations pursuant to 33
14 U.S.C. § 1329(h)(8). Nor did the Court overlook or fail to address the fact that every Section 319
15 satisfactory progress determination is based on distinct fact-specific circumstances. (Dkt. No. 42
16 at 4.) Plaintiff alleges Defendants’ 2015 progress determination was arbitrary and capricious
17 because Washington’s 2015 Section 319 Plan “contains no schedule for implementing BMPs and
18 no identified BMPs.” (Dkt. No. 18 at 31.) Plaintiff’s allegations demonstrate the issue is not
19 moot because the situation is capable of repetition but could evade review. This is true in spite of
20 the fact-specific circumstances involved.

21 The Court DENIES Defendant’s motion for reconsideration (Dkt. No. 42).

22
23 DATED this 31st day of October 2017.

24 William M. McCool
25 Clerk of Court

26 s/Tomas Hernandez
Deputy Clerk